

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

T. J. ZMAGORIC
PL-7

FILE:

B-216898

DATE: September 25, 1985

MATTER OF:

Raytheon Support Services Company

DIGEST:

1. Agency procedures for administrative review of the results of Office of Management and Budget Circular No. A-76 cost comparison studies, including the membership of appeals boards, are matters of executive policy and not within the scope of review in a bid protest.
2. In order to prevail on a protest against an agency decision to perform in-house, rather than contract out, the prospective contractor must demonstrate not only that the agency failed to follow proper cost comparison procedures, but also that this failure materially affected the outcome of the cost comparison.
3. General Accounting Office does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. Consequently, GAO will not investigate whether an agency's in-house performance is in accord with the performance work statement used to determine the cost of contracting out.

Raytheon Support Services Company protests the Department of the Air Force's decision to operate the base supply system at Kirtland Air Force Base, New Mexico, itself, rather than by contracting out. This decision was a result of the Air Force's evaluation of proposals submitted under request for proposals (RFP) No. F29650-84-R-0019.

We deny the protest in part and dismiss it in part.

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BACKGROUND

The Contracting Center at Kirtland issued the RFP as part of an Office of Management and Budget (OMB) Circular No. A-76 cost comparison. It provided that the determination of whether to contract out would be based upon a comparison of the estimated cost of performing in-house with the lowest priced, technically acceptable proposal.

Kirtland received 14 proposals by the March 30, 1984, initial closing date. Following discussions and receipt of best and final offers, the contracting officer determined that Raytheon's was both technically acceptable and the lowest priced (\$9,492,899 for the 10-month base period and two 1-year options). Upon completion of a successful pre-award survey, Kirtland notified Raytheon of the possibility of a contract award.

The government cost estimate, prepared by the Manpower and Organization Branch at Kirtland, also was submitted on the initial closing date. The contracting officer held it unopened until completion of the evaluation of proposals. On May 2, the Headquarters, Military Airlift Command, notified Kirtland that because offerors had been told that the cost of furnishing safety shoes should be included in their proposals, a sealed envelope containing the government's estimate of this additional cost should be submitted to the contracting officer. On May 10, however, the Manpower and Organization Branch submitted a second complete estimate, including additional costs of \$6,223.

The contracting officer used this second estimate in conducting the cost comparison. After adjusting Raytheon's offer as required by cost comparison procedures, the contracting officer concluded that the total cost of contracting out would be \$10,748,342, compared with \$10,362,026 for performing the work in-house. Due to this \$386,316 difference, on July 24, 1984, Kirtland informed Raytheon that it intended to operate the supply system in-house.

Raytheon appealed this decision to the Contracting Center, arguing primarily that it had been improper for the government to revise its cost estimate completely after the initial closing date; that the government proposal had not been prepared in accord with the manpower requirements of the performance work statement; and that the government's

cost comparison had understated the cost of in-house operation and overstated the adjustments associated with contracting out. Following an analysis of Raytheon's complaint by a Cost Comparison Appeal Review Team, the Contracting Center affirmed the original decision to perform the supply function in-house. Raytheon appealed this decision to Headquarters, Military Airlift Command. In its appeal, Raytheon also contended that the Kirtland review team had included some, if not all, of the same people who had been involved in the original cost comparison and implied that they therefore were biased. An Administrative Appeals Review Board concluded that the decision to perform Kirtland's supply operation in-house had been correct. Raytheon's subsequent protest to our Office raises the same issues that the firm presented to the Air Force.

Initially, we note that our role in reviewing agency decisions to contract for services or to perform them in-house is limited to ascertaining whether the agency adhered to the procedures set forth in the procurement regulations and in solicitations issued to obtain offers that provide the basis for cost comparisons. See D-K Associates, Inc., 62 Comp. Gen. 129 (1983), 83-1 CPD ¶ 55. However, we consider agency procedures for administrative review of cost comparison results, including the establishment of appeals boards pursuant to OMB Circular No. A-76, to be matters of executive policy and not within the scope of our review in a bid protest. Cf. Joule Maintenance Corp., B-208684, Sept. 16, 1983, 83-2 CPD ¶ 333 (GAO will not review allegations concerning composition of appeals boards when solicitation contains no criteria for this group). We therefore dismiss Raytheon's protest on this basis.

In order to prevail on the other grounds, Raytheon must demonstrate not only that the Air Force failed to follow proper procedures, but also that this failure materially affected the outcome of the cost comparison. This requires the presentation of sufficient, un rebutted evidence to raise a reasonable doubt as to the result of the cost comparison. See Infosystems, Inc., B-209900, Aug. 2, 1983, 83-2 CPD ¶ 155.

REVISION OF GOVERNMENT COST ESTIMATE

Raytheon's first basis of protest is that the second government cost estimate, submitted after the

initial closing date, is, in effect, a late proposal. Raytheon alleges that its submission violated Air Force Regulation 26-1 (October 2, 1981), which requires that the in-house cost estimate be sent to the contracting officer in a sealed envelope by the time stated in the solicitation for the receipt of proposals and then be held unopened until the commercial offer most advantageous to the government has been determined. Raytheon argues that the Air Force may have completely revised its estimate after it reviewed Raytheon's proposal, rather than merely adding the cost of the safety shoes.

While the cited regulation prohibits opening or modifying the document on which the government's original cost estimate is recorded, we find no restriction on additions or deletions to the government estimate necessitated by clarification or modifications of the statement of work. Obviously, requiring the Air Force to include in its estimate costs that offerors had been instructed to include in their proposals was necessary to ensure the fairness and accuracy of the cost comparison. We have reviewed both the original and revised cost estimates. Since the additional \$6,223 in the second is identified as "operations overhead," it is not clear that the figure represents only the cost of safety shoes. Nevertheless, the government estimate was increased, rather than decreased, so that the second submission did not adversely affect Raytheon in the cost comparison. We deny Raytheon's protest on this basis.

MANPOWER REQUIREMENTS

Raytheon next alleges that the government cost estimate was not in accord with the performance work statement, in that manpower for 23 work categories is inadequate. Raytheon bases this allegation on differences between manpower requirements used in preparing the government cost estimate and those in a study of Kirtland supply activities by an Air Force consulting group, the Air Force Maintenance, Supply and Munitions Management Engineering Team.

Using Air Force-wide data, this consulting group prepared an estimate of the number and categories of civilian personnel required to operate the supply system at Kirtland and at three other bases where the Air Force had previously decided it would no longer use military personnel for this function. The record indicates that

Kirtland used the consulting group's estimates as a baseline in preparing the government cost estimate, but added or subtracted man-hours as specific local conditions dictated. These differences are explained in a management study prepared at Kirtland in order to determine the most efficient and effective ways of performing the work. (This type of management study is required by OMB Circular No. A-76.) Raytheon contends that many of Kirtland's changes from the consulting group's estimate were not justified, and that the government cost estimate should be increased accordingly. As we discuss below, Raytheon has not established that the manpower requirements used in formulating the government estimate are unreasonable, and we deny the protest on this basis.

1. Automatic Data Processing

Kirtland used the same manpower requirements for automatic data processing (ADP) and punch card accounting activities as the consulting group. Raytheon points out that the consulting group assumed the use of a different computer system than the UNIVAC 1050-II included in the performance work statement and argues that additional manpower will be required. The Air Force responds that it discovered this error more than a month before submission of the government cost estimate and reevaluated the manpower requirements at that time. Kirtland concluded that substantial savings could be achieved with decentralized keypunch activities and that its original manpower estimates were accurate for the new UNIVAC computer system.

Raytheon's only rebuttal is that Kirtland's detailed justification is "strictly an opinion on the part of the Government." Such disagreement with an agency's technical opinion, without more, does not render the opinion unreasonable. Photonics Technology, Inc., B-200482, Apr. 15, 1981, 81-1 CPD ¶ 288 at 8. In addition, we note that for this category of work, Raytheon and Kirtland projected approximately the same manpower requirements, providing strong evidence that the government cost estimate is reasonable.

2. Full-time Personnel

Raytheon argues that the government estimate does not include costs for a full-time stock control manager or chiefs for four different branches: Management and Procedures, Material Storage and Distribution, Material

Management and Support, and Fuels Management. Raytheon also contends that the individuals who perform these jobs for Kirtland also be assigned typing, grounds maintenance, and other duties inappropriate to their positions. We have reviewed the Kirtland management study that supports the government cost estimate, and we find that the government estimate did include these full-time positions and that the individuals who fill them will perform managerial or supervisory tasks.

3. Indirect Functions

The Air Force consulting group projected a requirement for 17 positions to perform indirect support functions, including administrative tasks and supervision. In its own management study supporting the government cost estimate, however, Kirtland stated that many of these tasks could be performed by personnel performing direct functions and that, by consolidating organizational subunits, intermediate supervision could be reduced below the level projected by the consulting group. As a result, the government cost estimate included only two indirect support positions.

Raytheon argues that positions to which Kirtland assigned indirect functions are already fully devoted to direct tasks. The record, however, indicates that none of the positions included in the government cost estimate were allocated more than the required maximum number of hours per week. Raytheon also contends that Kirtland cannot avoid performance of the indirect requirements identified by the consulting group. However, that group's manpower estimate was based upon Air Force-wide tasks and a work center organization not adopted by Kirtland.

4. Miscellaneous Reductions in Manpower

Raytheon has questioned 11 additional manpower reductions in the government cost estimate. These reductions were identified and explained in Kirtland's management study. They involved instances in which the Air Force consulting group included tasks inapplicable to Kirtland, such as "shipments" in the pickup and delivery work center. Kirtland also will make reductions through innovations such as the use of a mobile fuels control center that can both deliver fuel and dispatch other vehicles.

The protester has established that the government cost estimate was in error in one reduction. After completion of the consulting group study, almost all support for Kirtland's civil engineering activities was omitted from the performance work statement. The government cost estimate, however, omitted all such support. Raytheon points out that manpower for the civil engineering support that remained in the performance work statement should have been included in Kirtland's estimate. The Administrative Appeals Review Board recognized that Raytheon was correct, but it differed with the protester regarding the monthly man-hours attributable to this support. Accepting Raytheon's contention that an additional 34.56 man-hours a month are involved, and assuming that this requires an additional employee, we find that the addition of this employee would not change the result of the cost comparison in view of the \$386,316 differential between in-house performance and Raytheon's offer.

COST ADJUSTMENTS

Raytheon also argues that the government cost estimate understated the cost of in-house operation and overstated certain adjustments associated with contracting out. Specifically, the protester contends that the government (1) miscalculated the distribution of grade levels for government civilian employees; (2) failed to escalate certain government personnel labor costs for inflation; (3) did not provide sufficient funds to cover overtime for civilian employees; and (4) failed to calculate accurately the impact of retained pay on either the government estimate or the cost of contracting out.

1. Distribution of Grade Levels

Raytheon believes that the Air Force may have developed an unrealistically low labor cost figure for the 155 positions planned for the government's civilian work force. Projected salaries for 100 of these positions were at the grade level of vacant positions. Raytheon assumes that many of these positions have actually been filled by current Air Force employees whose wages may be higher. Raytheon attributes \$158,565 in underestimated costs to this alleged inaccuracy. The Air Force states that 75 of the positions cited by Raytheon were vacant and that the projected salaries for the other 25 were those actually paid to the incumbents. In our view, Raytheon's supposition is insufficient to raise a reasonable doubt that correct procedures were followed by the Air Force.

2. Salary Escalation

Raytheon argues that the labor costs for 12 government management/supervisory positions should be adjusted upward for the second and third years of performance to accommodate anticipated inflation. According to Raytheon, offerors were required to escalate the salaries of certain management positions for the second and third years because those positions were not subject to the Service Contract Act. Raytheon believes that the Air Force should make a similar addition to its cost estimate.

The Administrative Appeals Review Board concluded that Raytheon might be correct but, if so, the government cost estimate would increase by only \$31,092. This amount is approximately the same as the adjustment proposed by Raytheon, and it does not affect the cost comparison outcome.

3. After-Hours Support and Overtime

Raytheon also alleges that Kirtland proposed insufficient support for periods outside of regular work hours (after-hours support) and did not include costs for overtime in the government cost estimate. Kirtland concluded that after-hours support for pickup and delivery of supplies did not justify a full-time employee and planned for this activity to be performed by employees assigned to another function. This practice had been implemented at the time of the consulting group's study, which estimated the same need for after-hours support as did Kirtland. Also, Kirtland estimated that no overtime would be required since no overtime has been recorded in supply activities for the past years. Some employees may have worked overtime and taken compensatory time off during regular hours, and Kirtland plans to continue this practice where necessary. We do not consider the government cost estimate to be unreasonable in this respect.

4. Retained Pay

OMB Circular No. A-76 requires agencies to include in a cost comparison as one-time costs added to the contractor's price any additional direct labor costs that the government will incur as a result of contracting out. These costs include "retained pay," under which government employees who have been downgraded are paid their former salaries for a certain period of time. Raytheon argues that the Air Force

overestimated the number of government employees who would be downgraded as a result of contracting out, contrasting retained pay costs for a similar conversion at Peterson Air Force Base, \$59,977, with those estimated for Kirtland, \$298,820. The protester believes that some employees would retain their grades, while others would retire or find comparable government positions in the Albuquerque, New Mexico, area.

For 52 of 65 individuals to be displaced by contracting out, retained pay estimates were added to Raytheon's price. The Air Force argues that it is speculative to assume that affected employees will retire or find new positions at their old grade levels. Kirtland considered the competitive employment area for its employees to be Air Force organizations located on the base, pointing out that a large new organization with numerous supply positions is scheduled for Peterson Air Force Base, so that displaced personnel at Peterson may be employed at their current grades. Consequently, retained pay costs for the Peterson conversion are logically much lower than those at Kirtland. Raytheon also believes that performing the supply function in-house would result in some employees being downgraded and receiving retained pay, and that this is not reflected in the government cost estimate.

Raytheon also believes that performing the supply function in-house would result in some employees being downgraded and receiving retained pay, and that this is not reflected in the government cost estimate. Kirtland used a mock reduction-in-force to develop its own estimate of the number and grade levels of employees who would be affected by performance in-house and by contracting out. It states that the individuals that would be displaced by in-house performance are targeted for comparable positions in other organizations at Kirtland, so no retained pay costs are applicable to the government cost estimate.

In our view, this area is largely a judgmental one. Estimates regarding retained pay involve complex and somewhat subjective judgments on an agency's part that our Office is not in a position to second-guess. Facilities Engineering & Maintenance Corp., B-210376, Sept. 27, 1983, 83-2 CPD ¶ 381. A protester's disagreement with the agency's judgment on the employment outlook for its own employees therefore does not establish that the judgment is unreasonable. See Video Visions, Inc., B-210010.2, June 26, 1984, 84-1 CPD ¶ 667 at 6-7.

TASK DESCRIPTIONS

Raytheon also questions the lack of detail included in the Kirtland management study upon which the government cost estimate was based. Offerors were required to address several hundred specific tasks identified in the performance work statement. The Kirtland study rearranged these tasks to correspond with the proposed organizational structure at the base and cross-referenced the work statement where possible. According to Raytheon, the relationship between these tasks and the performance work statement is not always clear, and some work statement tasks are omitted from Kirtland's format. The protester points out that it took 750 pages in its proposal to explain how it intended to implement the performance work statement and argues that Kirtland should have followed the outline of the work statement and provided the same amount of detail.

OMB Circular No. A-76 requires management studies done for cost comparison purposes to document the development and extent of the analytical process used and to record any new organizational structure. We also have concluded that it is essential for agencies to identify and document all elements of the comparison. MAR, Inc., B-205635, Sept. 27, 1982, 82-2 CPD ¶ 278. This requirement helps to ensure that the government and offerors base their cost estimates upon the same scope of work. Agencies, however, are not required to provide the same level of detailed explanation, including use of required formats, as are offerors preparing bids or proposals. We therefore do not believe the organization of the tasks or the level of detail with which they are discussed in the Kirtland management study establishes that the cost comparison was inaccurate.

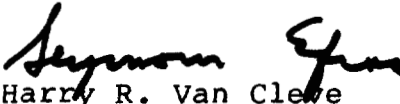
COMPLIANCE WITH PERFORMANCE WORK STATEMENT

Finally, Raytheon requests that we check the actual staffing by the Air Force in performing the supply function at Kirtland and determine whether the agency is meeting the requirements of the performance work statement. Our Office does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. Easco Tools, Inc.; Easco Hand Tools, Inc., B-212783, B-212907, Jan. 19, 1984, 84-1 CPD ¶ 83. In addition, once an agency undertakes performance as a result of a valid cost comparison, the method of performance is an internal agency matter, no longer reviewable in connection with a bid protest.

CONCLUSION

The only possible errors in Kirtland's cost estimate raised by Raytheon, relating to omission of support for civil engineering and escalation of salaries for management positions, are relatively minor and would not affect the validity of the cost comparison because in-house performance would remain less expensive than contracting out. Adjustment of the government cost estimate in these areas would not change the evaluation result.

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleve
General Counsel